

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

11578243 CANADA, INC., D/B/A
BLACKOXYGEN ORGANICS,
BLACKOXYGEN ORGANICS USA, INC.,
MARC SAINT-ONGE AND CARLO
GARIBALDI,

Plaintiffs,

v.

DAVID BYKOWSKI

Defendant

CIVIL ACTION NO. 5:21-CV-00880-XR

**JOINT MOTION FOR ENTRY OF
AGREED PERMANENT INJUNCTION AND FINAL JUDGMENT**

Plaintiffs 11578243 Canada, Inc. d/b/a BlackOxygen Organics, BlackOxygen Organics USA, Inc., Marc Saint-Onge and Carlo Garibaldi (collectively the “Plaintiffs”) and Defendant David Bykowski (“Defendant”) file this Joint Motion for Entry of Agreed Permanent Injunction and Final Judgment and respectfully shows the Court as follows:

On September 16, 2021, Plaintiffs filed their Original Complaint against Defendant David Bykowski asserting various causes of action and a request for entry of a Permanent Injunction [ECF No.1]. On September 22, 2021, Plaintiffs filed their First Amended Complaint against Defendant David Bykowski [ECF No. 4]. On November 1, 2021, the Court granted Plaintiffs’ Motion for Substituted Service [ECF No. 11]. On November 5, 2021, Plaintiffs filed their Affidavit of Service evidencing service of Plaintiffs’ First Amended Complaint, the Summons and a copy of the Court’s Order granting Plaintiffs’ Motion for Substituted Service upon Defendant David Bykowski on November 3, 2021 [ECF No. 12].

On or about November 10, 2021, Plaintiffs and Defendant reached a settlement of this dispute. Plaintiffs and Defendant have executed formal settlement documents, including an Agreed Permanent Injunction and Final Judgment, which is attached hereto as *Exhibit A* and will be separately submitted to the Court by electronic mail.

As the parties have reached a settlement, Plaintiffs and Defendant, pursuant to the settlement reached by the parties, hereby requests that the Court sign and enter the attached Agreed Permanent Injunction and Final Judgment providing that Defendant David Bykowski shall, within 30 days of entry of the Agreed Permanent Injunction and Final Judgment:

- a. Remove all known social media posts and videos published by Defendant on all internet and social media platforms, including but not limited to Facebook, TikTok, LinkedIn, Instagram and YouTube, that disparage or otherwise portray any of the Plaintiffs in a negative light. If, following entry of this Agreed Permanent Injunction and Final Judgment, any Plaintiff provides written notice to Defendant of a social media post or video published by Defendant that disparages or otherwise portrays any of the Plaintiffs or BlackOxygen Organics products in a negative light that has not previously been removed by Defendant, then Defendant shall remove such post or video within ten (10) days following receipt of Plaintiffs' notice.
- b. Remove all known social media posts and videos published by Defendant on all internet and social media platforms, including but not limited to Facebook, TikTok, LinkedIn, Instagram and YouTube, that disparage or otherwise portray any BlackOxygen Organics Brand Partners in a negative light. If, following entry of this Agreed Permanent Injunction and Final Judgment, any Plaintiff provides written notice to Defendant of a social media post or video published by Defendant that disparages or otherwise portrays any BlackOxygen Organics Brand Partner in a negative light that has not previously been removed by Defendant, then Defendant shall remove such post or video within ten (10) days following receipt of Plaintiffs' notice.
- c. Permanently cease all use of any internet domain or website that contains the name "BlackOxygen."
- d. Cease selling any product that contains the name "BlackOxygen."
- e. Cease all communication with any of the Plaintiffs.
- f. Cease all communication with any BlackOxygen Organics Brand Partners who have requested that Defendant stop communicating with them.

The parties have further agreed that the Court should retain jurisdiction over the parties for the enforcement of the Agreed Permanent Injunction and Final Judgment. Plaintiffs 11578243 Canada, Inc. d/b/a BlackOxygen Organics, BlackOxygen Organics USA, Inc., Marc Saint-Onge and Carlo Garibaldi and Defendant David Bykowski therefore request that the Court enter the Agreed Permanent Injunction Attached hereto as *Exhibit A* and separately submitted by electronic mail.

PRAYER

Wherefore, Plaintiffs 11578243 Canada, Inc. d/b/a BlackOxygen Organics, BlackOxygen Organics USA, Inc., Marc Saint-Onge and Defendant David Bykowski respectfully request that the Court:

1. Sign and enter the Agreed Permanent Injunction and Final Judgment submitted herewith;
2. Retain jurisdiction over the parties for enforcement of the terms of the Agreed Permanent Injunction and Final Judgment; and
3. Dismiss the above styled matter with prejudice.

Date: November 12, 2021.

AGREED AS TO FORM AND CONTENT:

By: /s/ C. Brenton Kugler
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Appearing Pro Se

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on Defendant David Bykowski, who is appearing *pro se*, in accordance with the Federal Rules of Civil Procedure on November 24, 2021.

David Bykowski
16465 Henderson Pass
Apt. #1314
San Antonio, Texas 78232-3200

Via Frist Class Mail and Email

/s/ C. Brenton Kugler
C. Brenton Kugler